

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

MM Docket No. 98-22

RECEIVED

APR 17 1998

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In re)
)
 Amendment of Section 73.202 (b)) RM-9183
 Table of Allotments)
 FM Broadcast Stations)
 (DeRuyter and Chittenango, NY))

To: The Chief, Allocations Branch

COMMENTS OF PETITIONER

CRAM COMMUNICATIONS, LLC ("petitioner"), by its counsel, respectfully submits its comments in support of the above-captioned Notice of Proposed Rule Making ("NPRM"). In support whereof, the following is stated:

1. Petitioner hereby reiterates that it is its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly.¹ The applicant's original petition for rule-making is hereby incorporated herein by reference. In addition, the petitioner has the following comments on specific issues raised in the notice of proposed rule making.

2. In the NPRM, para. 3, the Commission pointed out that "the public interest is not served by removing a community's sole local transmission service only to provide such a service to another community." Accordingly, the Commission requested that the petitioner provide "any other public interest benefit which would justify granting a waiver of the general prohibition against the removal of a community's sole local broadcast

¹ It is noted that no change in the transmitting facilities is requested. Only the community of license.

service.” As will be demonstrated herein, the general prohibition does not apply in the instant case, and the public interest benefits redound in favor of a grant of the instant proposal.

3. In order to understand the instant proposal in its proper context, it is necessary to detail the history of WVOA (formerly WVCN). In 1948 WVCN (105.1 FM) commenced operations as part of a 5 station network built to service farmers in Upstate New York. As indicated in the attached newspaper article of June 3, 1948, from the *DeRuyter Gleaner*, this was the “first farmer-owned radio broadcasting system in history, as well as being the first group of FM stations built to operate as a network.” There were very few FM radios available in 1948; however, the network provided radios set to their frequencies for the farmers in their co-op. In effect this gave the farming community an exclusive network to get information pertinent to them. For this reason the location of the City of License was selected not for community as much as for the number of farmers that signal would cover. DeRuyter was chosen not because of the needs of the community but because it was the closest community in proximity to the tower location desired to serve the farming community.

4. Over the decades since the late 1940's, farming has declined and with the build-up of surrounding communities, the Village of DeRuyter, primarily a farming community, has declined in population. Having always been a small community, there are still several small businesses such as a gas station. The two “largest” businesses are Agway Feed and Supply which employs eight people and DeRuyter Textiles which employs six people and does contract work for larger companies.

5. At one time (for a period of 21 years), DeRuyter had a weekly newspaper, "The DeRuyter Gleaner." However, as result of increased readership to the Syracuse and Cortland dailies, and the creation of "Pennysavers," the DeRuyter paper stopped publication. DeRuyter also previously had a car dealer, Allen Wood Chevrolet, which also closed down because of competition with the larger dealerships in Syracuse and Cortland.

6. It also came to be that some of the surrounding communities such as Cazenovia, Manlius, and Homer which are closer to the larger cities of Syracuse and Cortland began to develop into "bedroom" communities. As a result these nearby communities began to thrive with additional shopping areas and residential development further causing a decline in the ability for businesses in DeRuyter to remain in operation.

7. As the farming community began to receive its information from other areas and they began receiving more radio signals, the need for an exclusive farming network decreased, and the 5 stations were sold to Northeast Radio Corporation which began to place less emphasis on farming information. By 1969 when the Christian Broadcasting Network assumed ownership the farming communities' dependence on the station no longer existed. The format has been primarily religious since that time.

8. Today, DeRuyter is a small rural community that is no longer dependent on farming and is more a bedroom Community for those who work elsewhere. Farm Implement Dealerships, Auto Dealerships and other businesses that once served the community have closed. As previously demonstrated in the petition for rule making, the population of the community has decreased.

9. From the above analysis, two facts become immediately obvious. First, the need for a local transmission service in DeRuyter has ceased to exist as the community has

decreased in population and has changed in character to be nothing more than a bedroom community rather than an independent locality. Second, and more importantly, DeRuyter never has had a “local transmission service” in the true meaning of that term. As discussed above, DeRuyter was merely designated as the community of license because it was the community closest to the proposed transmitter site for this “farming network.” In point of fact, the studio for all 5 stations in the network was located at Connecticut Hill in the Town of Newfield. The studio was never located in DeRuyter.

10. Given the unique circumstances of this station, DeRuyter was not founded as a traditional local transmission service with a local studio and local programming. It was founded as a regional station intended to serve a unique farming region which no longer exists. Its programming originated outside the community of license, and no studio was maintained within the city of license. Given that the original purpose of the station has ceased to exist (service to the farming community of Upstate New York) and that the station was not established to serve the local needs of DeRuyter, there is no loss of a local transmission service to DeRuyter in actual fact. Therefore, the Commission’s concern with loss of local transmission service must be tempered by the unique circumstances of this case which clearly are very different from the normal situation where stations are licensed to specific communities for the purpose of providing service to those communities with local programming, local studios, etc. Such was not the case with the farming network which provided an important service in its day but which is now outmoded. Petitioner inherited this situation and is now attempting to correct it to provide traditional service to a deserving local community which has no other local service and which is ten times the size of DeRuyter. This is a needed correction to an historical anomaly.

11. Notwithstanding the fact that, historically, the DeRuyter station was not initiated to provide local transmission service to DeRuyter, petitioner herewith makes the following formal commitments which it will adhere to if the Commission grants it permission to change its community of license to Chittenango: 1) Petitioner will continue to provide programming specifically directed to the needs and interests of DeRuyter. 2) Petitioner will provide local phone service from DeRuyter to its main studio. It is noted that there will be no change in the location of the main studio. 3) Petitioner will maintain a Local Public File in DeRuyter.

12. In addition to the above, it is noted that WVOA is a Class B “regional” station. Such stations were never intended to serve small communities such as DeRuyter with a population well under 1,000. In this case, the “efficient” use of the spectrum, dictated by Section 307 of the Communications Act, mandates the proposed change in community of license to reflect service of a substantial community by this regional facility. Chittenango is nearly 10 times larger than DeRuyter and clearly a first service to Chittenango is a more efficient use of this “regional” channel.

13. It must be emphasized here that the proposed change in community of license for WVOA does not involve a mere change to a slightly larger community or even a substantially larger community. What is proposed is a change to a vastly larger community nearly 10 times the size of the existing community with no local radio station. Indeed, Chittenango is the home of its own major manufacturing plant - Gray-Syracuse - which has 422 employees. This plant alone has almost as many people as the total population of DeRuyter. To put the matter in even sharper perspective, the Chittenango Central School has a student population of 2,800. In other words, the school population

alone is more than 5 times the total population of DeRuyter. Please also note that this is not the case of a move from a small but independent rural community to a bedroom community of a large city. The reverse is true. DeRuyter has become nothing more than a bedroom community while Chittenango is much more, having its own industrial and cultural base.

14. The cultural base of Chittenango is most important and bears repeating here. More details are set forth in the original petition for rule making. Chittenango is the birthplace of L. Frank Baum, the author of the Wizard of Oz books. When entering the business section on Genesee Street one sees yellow brick sidewalks on both sides of the street symbolizing the Yellow Brick road in the 1939 Wizard of Oz movie. As discussed in more detail in an attachment to the original petition, the annual Oz Fest draws an average of 25,000 for weekend festivities. This is a major tourist attraction which brings many people to Central New York for the first time. In contrast, DeRuyter has no significant cultural or historical base to mark its unique character as a community. The character of Chittenango as the birthplace of Oz marks it as a unique and distinct community of significance to all Americans, if not the world, who for decades have been raised watching the fabulous production of the Wizard of Oz. Chittenango is also the home of Chittenango Landing Canal Boat Museum, which is on the State and National Register of Historic Places (attachment to petition for rule making). Even if Chittenango were not 10 times the size of DeRuyter, it would deserve its own radio station based on its significant cultural and historical roots alone.

15. As expressed by the Commission in the NPRM, at para. 3, “a waiver of the prohibition on the removal of a community’s sole local broadcast service will be

considered in the rare circumstances where removal of a local service might serve the public interest....” The Commission has on several occasions permitted such action – such as in the *Llano and Marble Falls, Texas*, 12 FCC Rcd 6809 (1997) case, cited in the NPRM. Several other cases were cited in the petition for rule making. Clearly, the instant case is unique and a waiver is justified here as well. Historically, the station was never licensed to be a local outlet for DeRuyter, which was merely the closest local community to the proposed transmitter site for this part of the rural farming network of which the station was a part. There has never been a studio in DeRuyter, and the station was not operated as a traditional local outlet for DeRuyter by any of its previous owners. Petitioner, as the new owner of the station, desires to correct this historical anomaly. Petitioner desires to utilize the station as truly a local outlet for a deserving community. Chittenango is such a community. DeRuyter never has been.

16. Under the unique circumstances discussed hereinabove, it is clear that a waiver of the prohibition against removal of a local service is justified. The station never really operated as a local outlet for DeRuyter, and Chittenango is by far the preferred community under Section 307 of the Communications Act. This would be analogous to a situation where a decision was to be made as to whether to put a first radio station in Washington, D.C. when to do so would be to remove the station from Tysons Corner, VA when the station was only licensed to Tysons Corner because it was a convenient location for the transmitter site.

17. The requirements of the Act are clear when put in proper perspective. The choice here is between a substantial community with a rich cultural and historical tradition versus a dying rural community which had a station licensed to it only because it was a

convenient location for the transmitter site. This is a unique opportunity to correct an historical anomaly and provide a first service to a deserving community. As such, this case is unique and would have no precedential impact on any other known situation in the country. The facts are limited to an historical anomaly, involving service by a regional broadcasting facility to a community under 1,000 (decreasing in population), to be replaced by a growing community nearly 10 times as large with historical/cultural roots of State, National and even International significance.

18. This is not the type of change the Commission sought to prohibit by its policies and rules and is clearly the type of situation which cries out for correction. The fiction of DeRuyter as a local community which would be losing local service is equivalent to the fiction of Oz as an all-powerful ruler. It must be exposed for what it is and corrected. The public interest, convenience and necessity would clearly be served by such a result, and waiver of the prohibition on removal of "local service" to DeRuyter is respectfully requested.

19. As a final matter, the Commission invited comment, at para. 4, on whether "waiver of Section 73.207 would be appropriate in this instance." Since no change in transmitter site or power is being proposed, it is clear that "no new short-spacings are created, no existing short-spacings are exacerbated, and the potential for interference between the currently short-spaced stations is not increased." *Newnan and Peachtree City, Georgia*, 7 FCC Rcd 6307 (1992). As also pointed out by the Commission, the rules do "not specifically address grandfathered short-spacing situations such as this." The Commission must apply its rules liberally to protect grand-fathered stations. Since there is

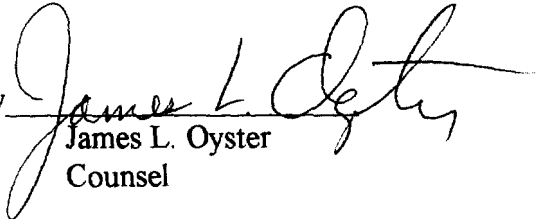
no change in spacing, any waiver which is required is in the public interest and should be granted.

WHEREFORE THE PREMISES CONSIDERED, it is respectfully requested that the Commission grant the instant rulemaking as discussed hereinabove.

Respectfully submitted,

Law Offices
JAMES L. OYSTER
108 Oyster Lane
Castleton, Virginia 22716-9720
(540) 937-4800
April 17, 1998

CRAM COMMUNICATIONS, LLC

By 
James L. Oyster
Counsel

DeRuyter Honors Its War Dead With Services

Nice weather greeted quite a large group in DeRuyter on Memorial day as they assembled together to honor the heroes of both past and present wars. The services were in charge of the local Owen Woodford Post, American Legion, who arranged the following program:

A parade consisting of a Color Guard, Legionnaires, the local Central School Band, Boy Scouts, Cubs, Scouts, Brownies, and children tying flowers to decorate the graves of DeRuyter's departed veterans formed in front of the Legion on Seminary street between thirty and ten, and marched to West cemetery, where the following services were held:

Invocation.....Rev. Clifford E. Webb
Audible American Legion Constitution.....Local A. L. Post
Laying Address.....Ellen Barber
Flanders Field.....Gwendolyn Barber
Address.....Col. Charles W. Skeele
Bible to Veterans
"Buddy" and "Star Spangled Banner".....School Band
Invocation.....Rev. Zack H. White
Closing Ceremony
Taps to Dead and Taps

Following the sounding of Taps procession returned to the Legion where it disbanded.

Colonel Charles W. Skeele's address of the day, which was well received after paying appropriate tribute to our fallen heroes of both past

present wars, was centered on the National Boy Scout motto: "Be Prepared," and by so doing he believes that America can be safe, and thereby eliminate the possibilities of future wars and more war dead. Col. Skeele believing no bully is going to pick on me if he carries a large club. In other words make America safe by being "Prepared," with a large military force, of both men and equipment.

During the service the Legion read the Poppy Poster prizes as follows: First, Eugene Burdick; second, Charles Kinney; third, Kenneth Beck.

Shortly after the services here local Post left for Berwyn to honor the memory of Owen Woodford after whom the Post was named.

Members Attend Weekend Camp

Madison County 4-H Club members attended a week end camp at Camp Wans, May 21 through 23. Miss M. Timmerman of Clockville, Zoe Marshall of Munnsville, Wil Dommett of Cazenovia and Jo Fisher of Canastota were appointed as delegates. The camp week was arranged to provide an opportunity for older club members to help others from the central of the state to discuss ways of making a stronger 4-H organization, as well as many profitable plans for the future came out of the week end meeting.

Navy's air arm reached maturity on its thirty-first birthday—8, 1942—when it played its important role in modern warfare in checking the advance of the Japanese at the two-day crucial battle of the Coral Sea.

William discovered the Phillips in 1520.

Comm. Sumner S. Gill Announces Candidacy

Eaton, N. Y., June 1, 1948. Commissioner of Social Welfare, Sumner S. Gill announces his candidacy for re-election next fall. The Commissioner was appointed by the Board of Supervisors to fill the unexpired term of Mrs. Nathan Wheeler. He was elected to the office the following November, and with his wife serving as Matron, lives in the County Home at Eaton.



SUMNER S. GILL

Mr. Gill was appointed in 1945 and he formerly acted as Deputy County Treasurer from 1941 to May 1, 1945. Prior to that time he was in the automobile business for thirteen years and in farming for five years. He was born and brought up on a farm in the Town of Smithfield. He acted for two years on the Town Board of the Town of Smithfield.

Newcomb, Attends Ford Regional Sales Meet

The all-new 1949 Ford car was shown for the first time to more than 1,000 Ford dealers from the Northeastern part of the Country at a Regional Sales Meeting and preview showing held Saturday, May 22, in New York City at the Waldorf-Astoria. Kenneth C. Newcomb, Ford dealer, Cuyler, N. Y., disclosed recently.

Although the new Ford line will not be shown publicly until the World Premier June 10th in the Waldorf-Astoria, the private preview was held so Ford dealers could get an early glimpse of the radically-changed cars they will soon offer to the public.

In commenting on the preview, Mr. Newcomb said that it was held in strict secrecy and under conditions "reminiscent of war-time security". Design, appearance, and engineering features of the new line must remain confidential until the public introduction June 10th.

Henry Ford II, President of the Ford Motor Company, in a special film message to the dealer group declared, "There is only one feature, one outstanding feature, in the 1949 line that is not new. It is a feature that was built into today's car by my grandfather. We might call that feature the traditional Ford philosophy of giving the public the highest quality at the lowest possible price. That's what makes it a Ford."

The new 1949 line of Ford passenger automobiles represents an investment by the Ford Motor Company of more than \$110,000,000 in

Rural Radio Network To Go On Air Next Sunday, June 6th

At 12:55 on the afternoon of Sunday, June 6, the words "This is the Rural Radio Network" will be heard across the state for the first time, as the farmers' own broadcasting system goes on the air with five of its upstate FM stations, and its New York City affiliate.

A special 15-minute program will start the Network's broadcasting activities, with its president, Harold L. Creal; General Manager R. Bruce Gervan; Mrs. Frances Todd and Don J. Wickham, directors, presenting the story of Rural Radio Network.

Bob Child, director of service programs, will interview Bob Marshall, dairyman of Ithaca; Don Kuney, poultryman of Seneca Falls, and John Babcock, farmer of Ithaca, at 2:00 P. M. The program, titled "Farm Life in June," will also feature Claire Banister, director of women's programs, with two farm wives and Miss Orilla Wright, assistant state leader of Home Demonstration Agents, and a talk by Rym Berry, well-known farm humorist.

Originating from Rural Radio Network's New York City affiliate, FM Station WQHF, will be a program featuring Miss Pearl Buck, reading her own children's stories at 5:30; a piano concert at 7:30 by Virginia Ruggerio; a commentary of news of the forthcoming week by Dr. Charles Hodges, RAN correspondent accredited to the United Nations; and parts of regular newscasts.

Reverend Dutton S. Peterson, pastor of the Methodist Church at Odessa; Dr. Gilbert Wilson of Jacksonville; Lee Hamrick, Agricultural News Service Editor; A. B. Gensung, Northeast Farm Foundation, chief economist; Dr. Miller McClintock, former Mutual Broadcasting System president and now senior consultant for Rural Radio Network; Frank Benway of Ontario and Harry Garry, "The Singing Farmer of the Helderbergs," of Voorheesville, are a few of the people who will be heard on Rural Radio's initial broadcast day.

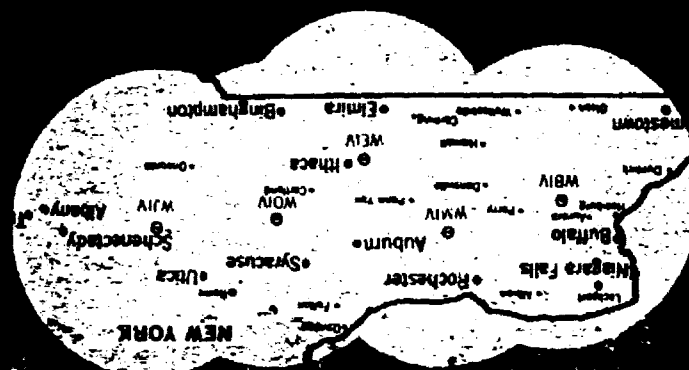
Regional weather forecasts voiced from Albany by E. L. Christie, head of the U. S. Weather Bureau, Albany area, make up the 7 p. m. "Weather Roundup."

Musical and dramatic programs will also be heard on Rural Radio Network's opening day.

Over 50% of the programs scheduled for the first week of operation, most of which will be continuing features, will be "live" broadcasts.

Rural Radio Network is the first farmer-owned radio broadcasting system in history, as well as being the first group of FM stations built to operate as a network. It was founded by ten state-wide farm organizations to bring farm and rural people the type of information and entertainment they want. Its headquarters, master control and main studios are at Ithaca, N. Y. Stations are located near Wethersfield, WENF, the Niagara Frontier Station, 107.7 megacycles on the FM dial; Bristol Center, WVBT, the Genesee Valley Station 101.9 mc; Ithaca, WVFC, the Finger Lakes Station, 95.1 mc; DeRuyter, WVCN, the Central New York Station, 105.1 mc; Cherry Valley, WVCV, the Cherry Valley Station, 101.9 mc; and the sixth, which will go on the air later this summer, Turin, WVBN, the Black River Station, 107.7, WGHE, New York City, outlet of Rural Radio Network, operates on a frequency of 101.9 mc.

Rural Radio Network will be on the air each day from 11:45 A. M. until 7:45 P. M. Early this fall, the Network will broadcast 15 hours daily.



WJIV, 101.9

Cherry Valley — Entire Capitol District and the Mohawk Valley

WOIV, 105.1

DeRuyter — Syracuse and Central New York

WEIV, 103.7

Ithaca — The Southern Tier

WMIV, 95.1

Bristol — Rochester and the Genesee Valley

WBIV, 107.7

Wethersfield — Buffalo and Western New York